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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/099,756	03/18/2002	Susan Farnsworth	011525-304	4103

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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/299,756

Applicant(s)

FARNSWORTH ET AL

Examiner

ARTHUR L. GORDIN

Group Art Unit

1261

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 9-8-03

☒ This action is **FINAL**.

- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-31

is/are pending in the application.

Of the above claim(s)

is/are withdrawn from consideration.

☒ Claim(s) 1-8, 16-20, 30, 31

is/are allowed.

☒ Claim(s) 9-11, 15, 21, 27-29

is/are rejected.

☒ Claim(s) 12-14, 22-26

is/are objected to.

☐ Claim(s)

are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____.

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

1. Claims 1, 2, 16, 31 and 32 are objected to because of the following informalities:
In claim 1, line 4, claim 16, line 7; claim 31, line 5 and claim 32, line 6, the semicolon should be changed to a comma. ¶ In claim 2, line 2, "a" should be added after "cutting." ¶
Appropriate correction is required.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 11 and 29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 is indefinite since it is not clear whether the sucralose (last line) is the sweetener recited in line 5 or is a second sweetener in addition to the sweetener in line 5. This can be corrected by canceling "at least one" (line 5); and changing "and" (line 6) to "that includes sucralose and optionally a"; and canceling the last two lines of claim 11. Also, claim 29 would be redundant if the above changes are made since claim 11 would cover the inclusion of a food grade color. Thus, claim 29 should be cancelled with the above changes.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9, 15, 21, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tiffany (column 3, lines 1-46; column 4, lines 56-65; and claim 15).

Tiffany is described in paragraph No. 6, Paper No. 5. Also, Tiffany contemplates addition of annatto and dextrose to mashed potatoes, which have been extruded into a desired form. In the absence of unexpected results it would have been obvious that addition of annatto and dextrose to extruded mashed potatoes would accomplish the same objectives as such addition to mashed potatoes before extrusion since the annatto solution would penetrate the formed potato mash in a manner similar to the mixing of annatto with potato mash before shaping. Further, it would have been obvious to substitute an artificial sweetener for the sweetener used in Tiffany since both are well known food sweeteners.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tiffany as applied to claims 9, 15, 21, 27 and 28 above, and further in view of Willard or Beck et al.

Applicant is referred to the reasoning set forth in paragraph No. 7, Paper No. 5.

7. Claims 1-8, 16-20, 30 and 31 are allowed.

8. Claims 12-14, 22-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 11 and 29 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

10. Applicant's arguments filed September 8, 2003 have been fully considered but they are not persuasive. Although Tiffany may not seek to impart a sweet taste to potatoes, as applicant contends, the fact remains that the sweeteners used in Tiffany would also achieve such a result whether or not intended. Applicant's further assertion, that an artificial sweetener would presumably not achieve Tiffany's objective of producing potato pieces with brown highlights and extra flavor, is unsupported by any factual evidence of record and is thus not persuasive.

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can generally be reached on Tuesday--Friday from 10 a.m. to 7:30 p.m. and on alternate Mondays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 305-7115 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

A. Corbin/dh
November 3, 2003



ARTHUR L. CORBIN
PRIMARY EXAMINER

11-5-03